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NEXTDOOR.COM, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

NEXTDOOR.COM, INC., a Delaware  
corporation,

Plaintiff,

v.

RAJ ABHYANKER, an individual,

Defendant.

Case No.: 3:12-cv-05667-EMC-NMC

**PLAINTIFF NEXTDOOR.COM, INC.'S  
MOTION *IN LIMINE* NO. 3 TO  
JEFFREY SHELDON TESTIMONY**

Final Pretrial

Conference: November 25, 2014

Time: 2:30 p.m.

Courtroom: 5, 17th Floor

Judge: Hon. Edward M. Chen

Trial Date: December 8, 2014

**REDACTED VERSION OF DOCUMENT SOUGHT TO BE FILED UNDER SEAL**

**NOTICE OF MOTION AND MOTION****TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE THAT** Plaintiff Nextdoor.com, Inc. (“Nextdoor.com”) will and hereby does move the Court *in limine* for an order excluding Defendant Raj Abhyanker (“Abhyanker”) from presenting directly or indirectly, any evidence, argument, or other assertion relating to the testimony of Jeffery Sheldon. Nextdoor.com’s motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Jennifer L. Kelly In Support of Plaintiff Nextdoor.com, Inc.’s Motions *in Limine* Nos. 1-3 (“Kelly Decl.”), the pleadings and other papers on file with the Court in this matter, and such further argument and evidence which may be presented at or before the pretrial conference.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**INTRODUCTION**

Nextdoor.com, Inc. respectfully requests, under Federal Rules of Evidence 401, 403 and 702, that the Court grant Nextdoor.com's Motion *in Limine* Number 3 and exclude Jeffrey Sheldon, Abhyanker's purported patent expert, from testifying on behalf of Raj Abhyanker.

Sheldon has no testimony relevant to the remaining issue: whether Abhyanker's registration in 2011 and thereafter use of the www.nextdoor.cm domain (the ".cm Domain") was in bad faith. Sheldon's opinion does not address: (1) Abhyanker's ownership of any trademark or any other intellectual property rights in, rather than relating to, NEXTDOOR or the www.nextdoor.cm domain (*see* 15 U.S.C. § 1125(d)(1)(B)(i)(I)); (2) Abhyanker's bad faith acquisition or use of www.nextdoor.cm in 2011; (3) whether the patent and applications Sheldon reviewed were even valid; and (4) whether these patent and applications were validly assigned or licensed. In fact, [REDACTED]

[REDACTED] Beyond this irrelevant opinion on patent law, Sheldon has no information to provide the Court and should be excluded under Rule 401.

Besides being irrelevant, permitting Sheldon to testify will be an unnecessary waste of time and confuse the issues. To evaluate and respond to Sheldon's testimony the parties would have to conduct multiple mini-trials regarding: (1) the validity of the patent and applications; (2) ownership of the patent and applications; (3) whether these applications contain elements needed to create priority for a valid patent; (4) Abhyanker's fabrication of assignments to himself relating to the patent and applications (as documented by the actual prior owners of the patents);<sup>1</sup> and (5)

<sup>1</sup> The latest fabrication is exposed in a lawsuit filed against Abhyanker by his former client, GeoTag, Inc. GeoTag alleges, with reference to supporting documents, that Abhyanker assigned one of GeoTag's applications to himself without its knowledge or authorization. *See* Kelly Decl., Ex. Q (*GeoTag, Inc. and IP Analytics, LLC v. Raj Abhyanker et. al.*, Case No. 4:14-cv-00562, E.D. Texas, Amended Complaint filed October 13, 2014) (asserting claims for breach of fiduciary duty; malpractice/professional negligence).

1 Abhyanker's ethical violations in assigning to himself the application of his client. Yet, even  
2 after these issues were decided, [REDACTED]  
3 [REDACTED] which does not and cannot suggest that Abhyanker  
4 owned any rights in the NEXTDOOR name or mark in December 2011, when Abhyanker  
5 registered the .cm Domain. Thus, any probative value of Sheldon's testimony is outweighed by  
6 the waste of time and confusion of the issues caused by multiple mini-trials on issues of patent  
7 law. Sheldon's testimony should be excluded under Rule 403.

8 Finally, Sheldon's testimony should be excluded for a third reason: under Rule 702 and  
9 the Supreme Court's *Daubert* line of cases, Sheldon's opinion is based on unsupported  
10 speculation and does not help the Court decide Abhyanker's bad faith. The Court does not need  
11 Sheldon's opinion to reach the conclusion that if there is a legitimate owner of a valid patent  
12 right, then that legitimate owner owns rights in the valid patent. This tautology is unhelpful to the  
13 Court, does nothing to refute Abhyanker's bad faith, and should be excluded under Rule 702.

#### 14 FACTUAL BACKGROUND

15 Sheldon's opinion addresses [REDACTED]  
16 [REDACTED]  
17 [REDACTED] Sheldon  
18 concedes, however, [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

25 Sheldon first opines, [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1 [REDACTED] That Abhyanker was aware of  
 2 www.nextdoor.com is undisputed. Indeed, Nextdoor.com has never disputed that Abhyanker  
 3 conceived of an idea, considered purchasing (but did not purchase) the www.nextdoor.com  
 4 domain, and that he then transferred the concept to Fatdoor, Inc. in 2007. What Nextdoor.com  
 5 consistently has maintained—and what the Court has already found—is that Nextdoor.com took  
 6 *nothing* from Abhyanker when it formed its successful network four years later. Sheldon’s  
 7 undisputed opinion regarding Abhyanker’s knowledge of www.nextdoor.com is irrelevant and  
 8 unhelpful to any remaining issue in this case.

9 Next, Sheldon opines that [REDACTED]

20 From these assumptions, Sheldon opines that [REDACTED]

22 [REDACTED] But the patent regime does not provide rights to a name; trademark does.

27 <sup>2</sup> Indeed, Sheldon cannot opine that Abhyanker has any rights in the NEXTDOOR name or mark  
 28 since the Court has already found that Nextdoor.com owns and has trademark rights in the  
 NEXTDOOR mark prior to any of Abhyanker’s purported rights. *See* Dkts. 192, 193 and 361.

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 Finally, Sheldon offers no opinion relating to any of the bad faith factors under the Anti-  
5 Cybersquatting law. 15 U.S.C. § 1125(d)(1)(B). [REDACTED]  
6 [REDACTED]

7 [REDACTED] Even still, Sheldon's opinion does not address: (1) whether Abhyanker  
8 owns "any intellectual property rights *in* . . . the [www.nextdoor.com] domain name"; (2) whether  
9 www.nextdoor.com was ever used to identify Abhyanker personally; or (3) whether he ever used  
10 the www.nextdoor.com domain to offer any goods or services.

### 11 ARGUMENT

12 Sheldon should be excluded from testifying for at least three reasons. First, his opinion  
13 regarding patent rights, divorced from the domain at issue, the critical time period, and any of the  
14 bad faith factors of the Anti-Cybersquatting statute is irrelevant under Rule 401. Second, his  
15 opinion regarding patent rights would require a series of mini-trials regarding issues unnecessary  
16 to deciding Abhyanker's bad faith. The waste of time and confusion caused by these mini-trials  
17 would outweigh any probative value of his testimony. Third, his tautological opinion that if one  
18 owns a patent, then one owns patent rights relating to the patent, is unhelpful to this Court's  
19 evaluation of Abhyanker's bad faith.

#### 20 **I. SHELDON'S TESTIMONY IS IRRELEVANT UNDER RULE 401**

21 Sheldon's opinion, and thus his testimony, does not address any facts relating to the core  
22 issue remaining in dispute. [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED] Rather  
26 than address these issues, [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 Given Sheldon's failure to offer an opinion regarding any issues remaining in this case,  
5 Abhyanker cannot meet his burden of establishing relevancy. Sheldon's testimony must therefore  
6 be excluded under Rule 401. *See also, Jinro v. Secure Investments, Inc.* 266 F.3d 993, 1011 (9th  
7 Cir. 2001) (concurring opinion) (concurring in the exclusion of expert testimony under Rule 401  
8 which was "simply not relevant to any issue in this case.").

9 To the extent any purpose may be divined for offering Sheldon, it appears to be to bolster  
10 Abhyanker's purported good faith by substantiating a potential basis for Abhyanker to believe he  
11 had a right to squat on the domain. But nothing that Sheldon offers comes close. Sheldon cannot  
12 testify as to what Abhyanker believed. [REDACTED]

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED] *See* 15 U.S.C. § 1125(d)(1)(B)(i)(I).  
16 If a party has intellectual property rights *in the domain name*—e.g., trademark rights, or publicity  
17 rights (such as Kanye.com)—such ownership of rights in the domain would weigh against finding  
18 use of the domain in bad faith. [REDACTED]

19 [REDACTED] Nor has even Abhyanker ever claimed  
20 patent rights in the domain name, since it is not a patentable subject matter. *See, e.g.,* 35 U.S.C. §  
21 101 *et seq.* In any event, [REDACTED]

22 [REDACTED]  
23 [REDACTED]  
24 **II. UNDER RULE 403 ANY PROBATIVE VALUE OF SHELDON'S TESTIMONY**  
25 **IS OUTWEIGHED BY THE COSTS**

1 [REDACTED] Until these assumptions are  
 2 established as evidentiary facts, his opinion has no conceivable probative value. Abhyanker  
 3 cannot have any patent rights even “related to” a word in the patent if the patent is invalid.  
 4 Similarly Abhyanker cannot own patent rights if he fabricated the assignment or license for the  
 5 patent. Yet here, that is exactly what Abhyanker appears to have done—assigning to himself the  
 6 rights in an application that was owned by his client, GeoTag, not only without its consent, but  
 7 without any written disclosure as required for entering such a transaction under California Rules  
 8 of Prof. Conduct 3-300. Kelly Decl. at Ex. Q (GeoTag’s malpractice and conversion complaint).

9 Thus, before there is any conceivable relevance to Sheldon’s opinion, the parties would  
 10 have to first conduct mini-trials regarding patent validity and Abhyanker’s purported acquisition  
 11 of any rights in the patent and applications.<sup>3</sup> And these trials would occur without any discovery  
 12 on the patent issues, as Abhyanker has insisted, in opposing relation of the patent cases to this  
 13 one, that the patent claims were entirely unrelated to this one. *See, e.g.*, Dkt. 236.

14 The waste of time and confusion of issues caused by multiple mini-trials regarding patent  
 15 law outweighs any limited probative value of Sheldon’s opinion. *See* Fed. R. Evid. 403; *United*  
 16 *States v. Hoac*, 990 F.2d 1099, 1103 (9th Cir. 1993); *Tennison v. Circus Circus Enterprises, Inc.*,  
 17 244 F. 3d 684, 690 (9th Cir. 2001) (affirming exclusion of evidence on Rule 403 grounds, which  
 18 might have resulted in a mini-trial and waste of time, in part because the trial court “enjoys  
 19 considerable discretion” in weighing the probative value of testimony under Rule 403). Given  
 20 that the most Sheldon could establish, even after those mini-trials, would be ownership of patent  
 21 rights, not trademark rights, and in 2014, not 2011, Rule 403 counsels exclusion.

### 22 **III. UNDER RULE 702 SHELDON’S TESTIMONY IS UNHELPFUL AND NOT** 23 **SUPPORTED BY SUFFICIENT FACTS**

24 A witness may not offer expert opinion testimony unless the testimony “will help the trier

25 \_\_\_\_\_  
 26 <sup>3</sup> Indeed there are already pending two separate actions relating to the ownership and validity of  
 27 the patent and applications. *See, GeoTag, Inc. and IP Analytics, LLC v. Raj Abhyanker et. al.*,  
 28 Case No. 4:14-cv-00562 (asserting that Abhyanker fabricated documents to claim ownership in  
 the ‘194 application); *Fatdoor, Inc. v. Nextdoor.com, Inc.*, Case No. 4:14-cv-2335-BLF, N.D.  
 California, Complaint filed May 20, 2014 (requesting an adjudication relating to the ‘328 patent).  
 There is no need to take up this Court’s time regarding issues to be decided elsewhere.



of fact to understand the evidence or to determine a fact in issue.” Fed. R. Evid. 702(a). For expert testimony to meet this helpfulness requirement, it must “address an issue beyond the common knowledge of the average layman.” *United States v. Vallejo*, 237 F.3d 1008, 1019, *opinion amended on denial of reh’g*, 246 F.3d 1150 (9th Cir. 2001). Expert testimony is unhelpful where the factfinder is “fully capable of understanding the evidence and deciding the issues through the use of its common knowledge and common sense.” *In re Apollo Grp. Inc. Sec. Litig.*, 527 F. Supp. 2d 957, 961-62 (D. Ariz. 2007) (quoting 3 Weinstein & Berger, ¶702.03[2][a], at 702-36). Abhyanker bears the burden of establishing admissibility and thus the helpfulness of Sheldon’s testimony. *See Bourjaily v. United States*, 483 U.S. 171, 175-76 (1987).

Here, Sheldon’s opinion that [REDACTED]

[REDACTED] The Court does not need expert testimony to help it understand that, assuming one owns rights in a written thing (*e.g.*, a book), then the owner has rights *related to* the words in that thing.

[REDACTED] See 15 U.S.C. § 1125(d)(1)(B)(i)(I). Nor does it support the right to imitate another’s website.

Finally, Sheldon’s speculative assumptions that [REDACTED] [REDACTED] have no factual basis for or analysis supporting them. This further renders his opinion excludable under Rule 702(b) and (d) as not “based on sufficient facts or data” and not “reliably applying any principle and method to the facts of the case.”

### CONCLUSION

Nextdoor.com respectfully requests that the Court grant this motion *in limine* and exclude Jeffrey Sheldon’s, irrelevant and unhelpful testimony regarding unrelated patent issues. Absent exclusion, Nextdoor.com requests leave to supplement its witness and exhibit lists to submit additional evidence regarding: (1) [REDACTED] [REDACTED] report; (2) Abhyanker’s non-ownership of the patent and applications at issue; and (3) Abhyanker’s fabrication of documents relating to the patent and applications at issue.

1 Dated: October 24, 2014

FENWICK & WEST LLP

2  
3 By: /s/ Laurence F. Pulgram  
Laurence F. Pulgram

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7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11  
12 NEXTDOOR.COM, INC., a Delaware  
corporation,

13 Plaintiff,

14 v.

15 RAJ ABHYANKER, an individual,

16 Defendant.  
17  
18

Case No. 3:12-cv-05667-EMC-NMC

**DEFENDANT RAJ ABHYANKER'S  
OPPOSITION TO PLAINTIFF  
NEXTDOOR.COM, INC.'S MOTION IN  
LIMINE NO. 3 TO EXCLUDE TESTIMONY  
OF JEFFREY SHELDON**

19 Defendant Raj Abhyanker ("Abhyanker") hereby opposes the motion *in limine* of plaintiff  
20 Nextdoor.com, Inc. ("Nextdoor.com") to exclude the testimony of expert Jeffrey Sheldon ("expert  
21 Sheldon") in its entirety.

22 The remaining issue in this case centers around a central element of the  
23 Anticybersquatting Consumer Protection Act (ACPA), that is, whether Abhyanker had a "bad  
24 faith intent to profit" when he registered the domain in question, nextdoor.cm. The statutory  
25 framework addressing what constitutes a "bad faith intent to profit" is complex and multifaceted.  
26 One of the key elements to examine in determining whether a defendant had a "bad faith intent to  
27

1 profit” is whether the defendant had “trademark or *other intellectual property rights* . . . in the  
2 domain name.” 15 U.S.C. § 1125(d)(1)(B)(i)(I). Abhyanker registered the domain name in  
3 question precisely because of the other intellectual property rights he held containing the same  
4 name. Abhyanker choose the domain name of nextdoor.cm, in part, because the domain name’s  
5 main elements appear within a patent held by Abhyanker.

6 At trial, defendant intends to show, *inter alia*, that the other intellectual property – that is,  
7 patent – rights Abhyanker held in the domain name in question establish that he did not act with a  
8 bad faith intent to profit when registering the domain name. The patent rights asserted by  
9 Abhyanker here are complicated and necessarily benefit from a thorough and complete expert’s  
10 explanation. Patents are long, at times confusingly worded, and, with an entire field of law  
11 dedicated to their drafting and prosecution, are of a character wholly unto themselves. Therefore,  
12 defendant enlisted the aid of expert Sheldon to review, analyze, and explain ownership rights in,  
13 and the legal consequences of, aspects of the patents Abhyanker filed as an inventor. At trial,  
14 expert Sheldon is anticipated to do exactly that. Expert Sheldon will explain the various  
15 components of a patent, and the legal ramifications for certain words or terms appearing in them.  
16 Such evidence will provide support for Abhyanker’s working in good faith to protect intellectual  
17 property interests generated from the patents. Of particular importance to Nextdoor.com’s  
18 motion: that good-faith reliance by Abhyanker would not be affected even if the intellectual  
19 property rights expert Sheldon discusses did not, in fact, accrue in the manner in which  
20 Abhyanker thought, so long as he genuinely believed in the accrual of those rights, and his  
21 thinking was reasonable for an inventor in his situation.

22 Despite the clear relevance and importance of expert Sheldon’s testimony, Nextdoor.com  
23 has moved to have it excluded from this trial. Abhyanker opposes this motion. Sheldon’s  
24 explanation and review is necessary in order to properly and sufficiently understand the basis for  
25 a chief component of Abhyanker’s defense as to why any bad faith with intent to profit is absent  
26 in this case. As such, his testimony is relevant, even critical, and he should be allowed to testify  
27 in this case.

1           **Argument**

2           Nextdoor.com has objected to the testimony of expert Sheldon at trial on the basis of  
3 Federal Rule of Evidence 401, 403, and 702.

4           **A. Sheldon's Testimony Is Relevant.**

5           Nextdoor.com first objects to the testimony of expert Sheldon on the basis of Federal Rule  
6 of Evidence 401, which states that "evidence is relevant if . . . it has any tendency to make a fact  
7 more or less probable than it would be without the evidence; and the fact is of consequence in  
8 determining the action."

9           To be admissible as relevant, evidence is only required to "logically advance a material  
10 aspect of the party's case." *Cooper v. Brown*, 510 F.3d 870, 942 (9th Cir. 2007). Sheldon's  
11 expert testimony will do exactly that: it will help advance and explain complicated issues  
12 surrounding a key factor used to determine the lack of bad faith with an intent to profit by the  
13 defendant in this case.

14           The issue remaining to be tried in this case is whether the defendant violated 15 U.S.C.  
15 § 1125(d)(1)(A) of the ACPA. To be found liable under the ACPA, the defendant must have,  
16 amongst other things, had "a bad faith intent to profit" from a mark that was registered as a  
17 domain name. 15 U.S.C. § 1125(d)(1)(A)(i)-(ii); *Interstellar Starship Servs. v. Epix, Inc.*, 304  
18 F.3d 936, 946 (9th Cir. 2002) ("A finding of 'bad faith' is an essential prerequisite to finding an .  
19 . . ACPA . . . violation."). The ACPA includes a list of nine statutory factors that are designed to  
20 help guide a court's determination as to "whether a person has a bad faith intent" described under  
21 the statute. 15 U.S.C. § 1125(B)(i). The very first of these factors examines "the trademark *or*  
22 *other intellectual property rights* of the person, if any, in the domain name." 15 U.S.C. §  
23 1125(d)(B)(i)(I) (emphasis added). The ACPA further provides that registrants who "believed  
24 and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise  
25 lawful" cannot be found to have the bad faith intent required under the statute. 15 U.S.C. §  
26 1125(d)(B)(ii).

1 Nextdoor.com has attempted to confuse the issue as to the purpose of expert Sheldon's  
2 testimony. Expert Sheldon will testify and explain the basis behind the defendant's belief that he  
3 had rights in the domain name at the time of registration. An important part of Abhyanker's belief  
4 in these rights stems from the appearance of the words "Nextdoor" in patent applications filed by  
5 Mr. Abhyanker. If, at the time of registering the domain name in question, Mr. Abhyanker held a  
6 reasonable belief that the appearance of the words "Nextdoor" in his previously filed patent  
7 applications granted him intellectual property rights in that name, then Mr. Abhyanker can make  
8 a critical showing that he lacked the required bad faith intent to profit in attempting to use that  
9 name, and therefore did not violate the ACPA.

10 Expert Sheldon's testimony will provide valuable and highly-relevant insight into the  
11 patent drafting and prosecution process, which is a difficult, tricky, and foreign process to most.  
12 The facts of this case present something of a unique circumstance, in that inventor Abhyanker is  
13 also a patent prosecution lawyer, and thus is and was well versed in patent minutia when he  
14 registered the nextdoor.cm domain name. Indeed, it was Abhyanker's personal knowledge of the  
15 inner workings of patent law that were in mind when he registered the nextdoor.cm domain name,  
16 as he drew upon the significance of the fact that Nextdoor appeared in his protected patents, and  
17 he therefore believed that he was registering the domain name in good faith. Through his  
18 testimony of the accrual of intellectual property ownership rights from patents, expert Sheldon  
19 will lend credence to Abhyanker's conducting himself in good faith to protect his interests.

20 Critically, Nextdoor.com does not attempt to base its objection on the argument that the  
21 words "*other intellectual property rights*" found within the text of the ACPA do not include  
22 patent rights. The text of the statute in question is broadly written, by design, and on its face  
23 includes rights arising out of all manner of intellectual property rights, including those generated  
24 from patents.

25 Moreover, these same facts constitute a "unique circumstance" to be considered as part of  
26 Abhyanker's defense. *See Interstellar Starship*, 304 F.3d at 946-47 ("Congress did not mean  
27 these factors to be an exclusive list; instead, the most important grounds for finding bad faith are

1 the unique circumstances of the case, which do not fit neatly into the specific factors enumerated  
 2 by Congress”) (internal quotations omitted). The fact that an inventor is himself a patent  
 3 prosecutor with an understanding, guided both by his own knowledge and that of more skilled  
 4 patent lawyers he consulted, of the interplay between patent rights and trademark rights, speaks to  
 5 his good faith in attempting to protect his intellectual property rights, in a mutually-supporting  
 6 sequence, in both the patent and trademark arenas.

7 Abhyanker’s intent when he registered the domain name in question, and whether he  
 8 subjectively held a reasonable belief that he had the right to use the term Nextdoor as part of a  
 9 domain name based on the appearance of the very same words in patents filed by Abhyanker, is  
 10 the central issue in the remaining portion of this case. Expert Sheldon, through careful and  
 11 helpful testimony, will explain how that belief came to be, and will lend credence to how the  
 12 belief is in fact a reasonable one, in light of ownership rights growing out of the patent materials  
 13 he has been asked to review.

14 B. The Probative Value of Expert Sheldon’s Testimony is Not Substantially Outweighed  
 15 By Undue Delay or Other Risk Identified by Rule of Evidence 403

16 Nextdoor.com also objects to expert Sheldon’s testimony on the grounds of Federal Rule  
 17 of Evidence 403, which states that a court “may exclude relevant evidence if its probative value is  
 18 *substantially* outweighed by a danger of one or more of the following: unfair prejudice, confusing  
 19 the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative  
 20 evidence.” (emphasis added).

21 Nextdoor.com appears to base its Rule 403 objections around the idea that multiple “mini-  
 22 trials” will need to be conducted before expert Sheldon can testify in this case. That is simply not  
 23 true. Expert Sheldon will testify at trial primarily about the various components in a patent and  
 24 the patent drafting process, and how intellectual property ownership rights then follow. He will  
 25 provide important testimony to help explain how it is objectively reasonable that Abhyanker held  
 26 the belief that the appearance of the words “Nextdoor” in the patent applications granted him  
 27 legal, enforceable rights. No “mini-trial” or other extended session is required for expert Sheldon



1 to testify in this case, as he need only explain how the components of a patent application work,  
2 and how an individual who accrues such rights would understand their significance and  
3 enforceability.

4 C. Sheldon's Testimony is Necessary and Helpful to Assist the Trier of Fact and is Based  
5 on Sufficient Facts.

6 Finally, Nextdoor.com has objected to expert Sheldon's testimony in this case on the basis  
7 that it will not meet the requirements for expert testimony set forth in Federal Rule of Evidence  
8 702. Nextdoor.com states that expert Sheldon does not meet the standard set forth in 702(a),  
9 which requires that "the expert's scientific, technical, or other specialized knowledge will help the  
10 trier of fact to understand the evidence or to determine a fact in issue."

11 Nextdoor.com bases this objection around the false premise that expert Sheldon will  
12 testify to the notion that if one owns rights in a written thing like a book, then the owner has  
13 rights related to the words in that thing. This objection, however, misses the point and purpose of  
14 expert Sheldon's testimony. Expert Sheldon is a highly qualified expert in the field of patent  
15 prosecution: he is the author of an entire treatise dedicated to the art of writing patent  
16 applications, has written over thirty published articles on the topic of patent law, and has served  
17 as an expert witness in ten prior proceedings. Expert Sheldon will explain and call attention to  
18 the various components of a patent application and the significance of words appearing in a patent  
19 application as a means of generating intellectual property ownership rights. Expert Sheldon can  
20 and will provide valuable and meaningful testimony to help guide the court in its determination as  
21 to the various components and structure of a patent in light of the requirements inherent in patent  
22 prosecution. This explanation, in turn, will be of significant help in reaching a determination as  
23 to whether Abhyanker lacked a bad faith intent to illicitly profit from Nextdoor.com when  
24 registering the domain name in question based on his earlier use of the term Nextdoor inside the  
25 patent applications examined by expert Sheldon.



For all of the aforementioned reasons, Abhyanker respectfully contends that expert Sheldon should be permitted to testify at trial in this case. He will provide valuable, highly relevant testimony that will reflect on whether defendant Abhyanker lacked the required bad faith intent to profit from a competitor when registering the domain name in question based on an examination and discussion of the components of two patents that utilize the very same word Abhyanker registered as a domain name.

**Dated: October 31, 2014**

\_\_\_\_\_/s/ david lavine\_\_\_\_\_  
DAVID LAVINE  
Attorney for Defendant RAJ ABHYANKER